

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 24, 2017

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 16OD-164

OAHU

Grant of Term, Non-Exclusive Easement to Hilton Hawaiian Village LLC for Pier Purposes; Termination of Revocable Permit No. S-7566; Waikiki, Honolulu, Oahu, Tax Map Key: (1)2-6-008:029

APPLICANT:

Hilton Hawaiian Village LLC, a foreign limited liability company

LEGAL REFERENCE:

Sections 171-6, 13, 17, 53(c), and 55, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of submerged land located in Waikiki, Honolulu Oahu, identified by Tax Map Key: (1) 2-6-008:029, as shown on the maps attached as **Exhibit A-1** and **A-2**.

AREA:

3,930 square feet (more or less), subject to review and approval by the Department of Accounting and General Services, Survey Division

ZONING:

State Land Use District:	Conservation
City & County of Honolulu LUO:	Public Precinct

TRUST LAND STATUS:

Section 5(a) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: No

CURRENT USE STATUS:

Encumbered by Revocable Permit No. 7566 to Hilton Hawaiian Village LLC, for recreational boating purposes at a current monthly rent of \$33,766 or \$1.50 per customer, whichever is greater. Staff notes the permit area described in the permit document is 3,917 square feet.

CHARACTER OF USE:

Right, privilege and authority to use, repair, and maintain existing pier over, under and across State-owned land.

COMMENCEMENT DATE:

To be determined by the Chairperson.

ANNUAL BASE and PERCENTAGE RENT:

To be determined by independent appraisal establishing fair market rent, subject to review and approval by the Chairperson, noting that the gross receipts for the calculation of percentage rent shall mean all income and revenue derived from, relating to, or connected with the operations, sales, and services rendered under the easement.

METHOD OF PAYMENT:

Semi-annual payments, in advance for base rent, and in arrears for percentage rent.

RENTAL REOPENINGS:

At the end of every ten (10) years of the easement, by independent appraisal.

EASEMENT TERM:

Fifty-five (55) years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with Hawaii Administrative Rule Sections 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing." See **Exhibit B**.

DCCA VERIFICATION:

Place of business registration confirmed:	YES <u>X</u>	NO
Registered business name confirmed:	YES <u>X</u>	NO
Applicant in good standing confirmed:	YES <u>X</u>	NO

APPLICANT REQUIREMENTS: Applicant shall be required to:

1. Pay for an appraisal to determine one-time payment; and
2. Obtain concurrent resolution from the Legislature pursuant to 171-53 (c), HRS.

Note: The requested area is mapped in Governor's Executive Order No. 4190 under CSF 24,360 dated October 13, 2006. So, the same map can be used for the subject easement with some minor revisions, if necessary.

REMARKS:

Starting in 1956, the Board of Harbor Commissioners of the Territorial government (BHC) granted three (3) licenses¹ to the owner/developer of the adjacent hotel property for the use of a strip of underwater area to construct a boat dock, concrete catwalk, and catamaran pier. **Exhibit C** shows the respective areas under the various licenses.

On September 1, 1964, the Board of Land and Natural Resources approved the issuance of Revocable Permit S-3528 (RP), to the Applicant for boating purposes. The RP encompassed the concrete catwalk, catamaran pier, and boat pier shown on Exhibit C for a total area of approximately 3,917 square feet.

At its meeting on October 23, 2009, agenda item D-12, the Board authorized the re-issuance of 144 RPs to various land tenants, which included the Applicant, for the purpose of incorporating updated standard language and conditions in dated RPs. Since then, the Applicant, who owns and operates the resort complex as shown on Exhibit A-1, has been the permittee under RP S-7566.

Recently, staff sent a letter to the Applicant inquiring whether they were interested in converting the monthly revocable permit to a term easement for the same purposes. By letter dated November 15, 2016 (**Exhibit D**), Applicant, through their counsel, expressed an interest in the conversion mentioned above.

The Applicant's counsel requests the option to opt out of the easement process and remain under the RP while being responsible for any cost, e.g. appraisal fee, incurred up to that point. The subject pier engages in various commercial activities, e.g. submarine tour, as well as the annual canoe paddling race events. As such, keeping the pier, regardless of long or short-term dispositions, will continue to allow commercial vendors and the community at large the availability of the facility.

¹License Nos. 97 (1956) [superseded by 97A (1958)], 140 (1960), and 157 (1961).

In addition, the substantial amount of annual revenue (\$400,000+) currently generated via the RP helps to support the Special Land Development Fund which cover various programs/operation/staffing of the Department, for example, Office of Conservation and Coastal Lands' operation and beach restoration projects, the Commission on Water Resource Management's programs relating to stream monitoring and related studies, the Division of State Parks for lifeguard services, the Engineering Division for the Dam Safety Program and geothermal mining (such as the Puna Geothermal Venture), and the Division of Forestry and Wildlife for the Threatened and Endangered Species program, Invasive Species program, wildland fire fighting, watershed protection and restoration, and natural area reserves. Therefore, staff has no objection to the continuance of the current RP, if necessary, and recommends the termination of RP S-7566 only if the requested easement is consummated.

Upon approval of today's request, Applicant will be reminded of the requirement for concurrent resolution from both houses of the legislature under Section 171-53(c), HRS prior to the issuance of the requested easement.

The Office of Conservation and Coastal Lands, Division of Aquatic Resources, Department of Planning and Permitting, Department of Facility Maintenance, and the Board of Water Supply has no objections and/or comments.

The Office of Hawaiian Affairs did not respond to the request for comments.

At its meeting on April 9, 1999, under agenda item D-20 (**Exhibit E**), the Board clarified the user of the subject pier to include any operator that HHV chooses to provide services to its guests and the calculation of the percentage rent shall include such guests. Staff recommends the adoption of the same arrangement in the forthcoming easement. In addition, staff recommends the Board delegate the authority to the Chairperson for any waiver of such percentage rent or portion(s) thereof for good cause, e.g. government use.

There are no other pertinent issues or concerns. Staff has no objection to the request.

RECOMMENDATION: That the Board:

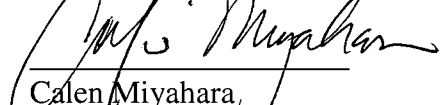
1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.
2. Assess a non-refundable administrative cost of \$500, under Section 171-6, HRS.
3. Authorize the subject request to be applicable in the event of a change in the ownership of the resort complex shown on Exhibit A-1, provided the succeeding owner has not had a lease, permit, easement or other disposition of State lands terminated within the last five (5) years due to non-compliance with such terms and conditions.

4. Subject to the Applicant fulfilling all of the Applicant Requirements listed above, authorize the issuance of a term, non-exclusive easement to the Hilton Hawaiian Village LLC, covering the subject area for pier purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:
 - A. The standard terms and conditions of the most current term shoreline encroachment easement document form, as may be amended from time to time;
 - B. The easement shall run with the land and shall inure to the benefit of the real property described as Tax Map Key: (1) 2-6-008:034², provided however: (1) it is specifically understood and agreed that the easement shall immediately cease to run with the land upon the expiration or other termination or abandonment of the easement; and (2) if and when the easement is sold, assigned, conveyed, or otherwise transferred, the Grantee shall notify the Grantor of such transaction in writing, and shall notify Grantee's successors or assigns of the insurance requirement in writing, separate and apart from the easement document;
 - C. Grantee may allow a third party to use the subject pier, provided all revenue generated shall be subject to the assessment of percentage rent and other terms and conditions of the subject easement;
 - D. Delegate the Chairperson to waive the percentage rent or portion(s) thereof for good cause.
 - E. Approval by the Governor and concurrence from the Legislature pursuant to 171-53 (c), HRS;
 - F. Review and approval by the Department of the Attorney General;
 - G. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and
 - H. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

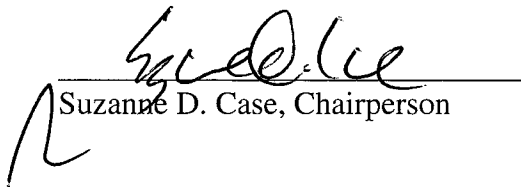
²The resort complex comprises of various tax map parcels as shown on Exhibit A-1,

5. Termination of Revocable Permit No. S-7566 upon the issuance of the requested easement.

Respectfully Submitted,


Calen Miyahara
Shoreline Disposition Specialist

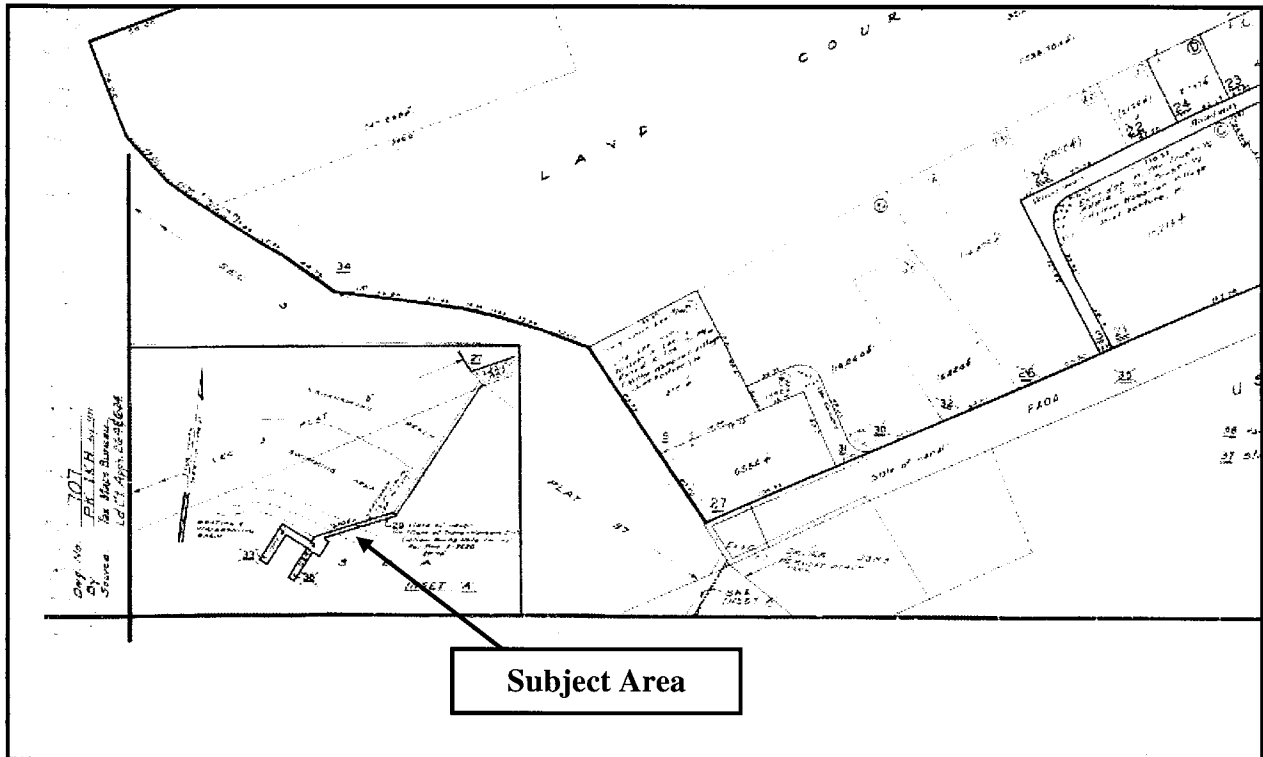
APPROVED FOR SUBMITTAL:


Suzanne D. Case, Chairperson



TMK (1) 2-6-008:029

EXHIBIT A-1



TMK (1) 2-6-008:029

EXHIBIT A-2

EXEMPTION NOTIFICATION

Regarding the preparation of an environmental assessment pursuant to Chapter 343, HRS and Chapter 11-200, HAR

Project Title: Issuance of Term, Non-Exclusive Easement for Pier Purposes

Project / Reference No.: PSF 16OD-164

Project Location: Waikiki, Honolulu, Oahu, TMK (1) 2-6-008:029.

Project Description: Issuance of term, non-exclusive easement for pier purposes.

Chap. 343 Trigger(s): Use of State Land

Exemption Class No.: In accordance with Hawaii Administrative Rule Sections 11-200-8 and the Exemption List for the Department of Land and Natural Resources approved by the Environmental Council and dated June 5, 2015, the subject request is exempt from the preparation of an environmental assessment pursuant to Exemption Class No. 1, that states "Operations, repairs or maintenance of existing structures, facilities, equipment, or topographical features, involving negligible or no expansion or change of use beyond that previously existing".

The request is triggered by the change in tenure of the disposition for the same improvement. The applicant is not planning to have any new improvement to the subject area. As such, staff believes that the request would involve negligible or no expansion or change in use of the subject area beyond that previously existing.

Consulted Parties: Agencies noted in the submittal.

Recommendation: It is recommended that the Board find that this project will probably have minimal or no significant effect on the environment and is presumed to be exempt from the preparation of an environmental assessment.

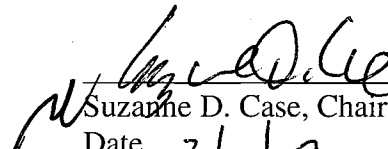

Suzanne D. Case, Chairperson
Date 2/16/17

EXHIBIT B

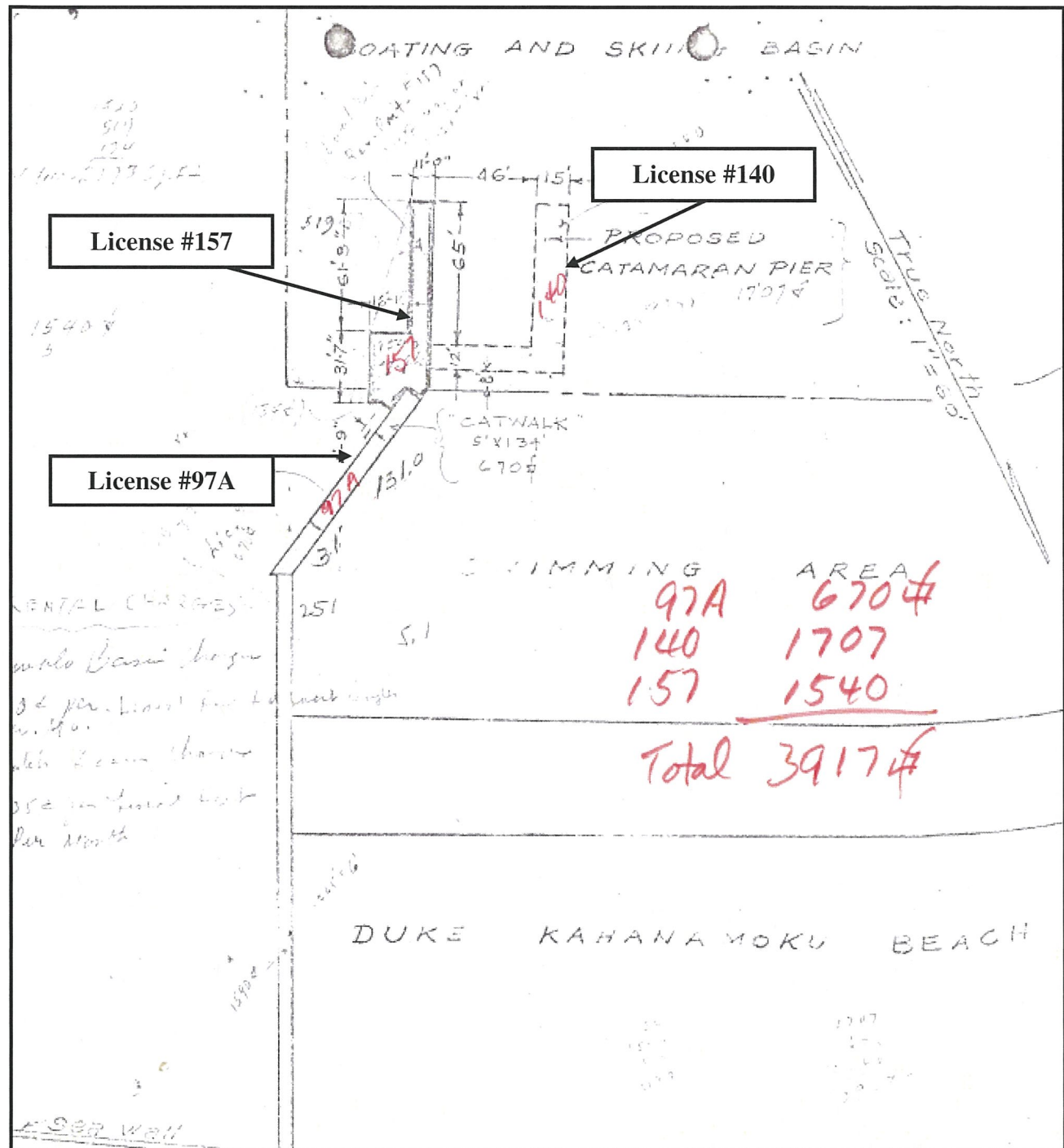


EXHIBIT C

STARN O'TOOLE MARCUS FISHER
A LAW CORPORATION

November 15, 2016

VIA U.S. MAIL

Ms. Suzanne D. Case
Chairperson
Department of Land and Natural Resources
P.O. Box 621
Honolulu, Hawaii 96809

Re: Revocable Permit No. 7566 ("*Revocable Permit*") for Recreational Pier Purposes,
Waikiki
Honolulu, Oahu; TMK (1) 2-6-008:029

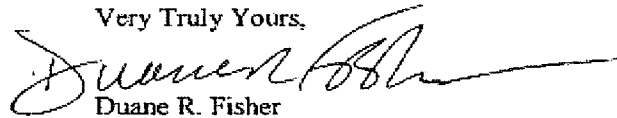
Dear Chair Case:

As you know, we represent Hilton Hawaiian Village, LLC ("*Hilton*"). This letter is in follow-up to our recent correspondence regarding the BLNR's request that Hilton decide whether to continue with the Revocable Permit, or transition to a long-term disposition for the Hilton Pier. Thank you again for allowing us additional time to consider the BLNR's request.

This will confirm that Hilton would like to pursue converting its Revocable Permit to a long-term disposition (*i.e.*, a 55-year, non-exclusive easement). We understand that the DLNR staff will begin the process and be back in touch with us to discuss next steps.

Thank you very much.

Very Truly Yours,


Duane R. Fisher

c: Mr. William Kidd
Mr. Gerald Gibson
Mr. Nevin Kelly
Mr. Russell Tsuji
Mr. Barry Cheung

Pacific Guardian Center, Makai Tower 733 Bishop Street, Suite 1900 Honolulu, HI 96813
Telephone: (808)537-6100 Fax: (808)537-5454 Website: www.starnlaw.com

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EXHIBIT D

D-20

See plate number record #70 k per auto.

State of Hawaii
Department of Land & Natural Resources
Land Division

APR 9 1999

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii 96813

OAHU

SUBJECT: Clarification on Uses Allowed Under Revocable Permit No. S-3528 for the Pier Fronting the Hilton Hawaiian Village at Waikiki, Oahu, Hawaii, TMK: 2-6-8:29

Statute: Section 171-55, Hawaii Revised Statutes

Applicant: Hilton Hawaiian Village Joint Venture, a Hawaii General Partnership

Purpose: Boating Purposes

Land title
status: Subsection 5 (a) lands, non-ceded

Land status: Revocable Permit #S-3528 issued to Hilton Hawaiian Village for the boat pier use.

BACKGROUND:

The pier itself had been permitted by the Territory as early as 1956 when the Board of Harbor Commissioners issued License No. 97A to Kaiser-Burns Development Corporation. Subsequent licenses were issued in 1960 [License No. 140] when the license area was increased. In 1961, the Board of Harbor Commissioners issued Revocable Permit No. 157 to Hilton Hotels Corporation for the pier. Revocable Permit No. S-3528 was first issued to Hilton Hawaiian Village by the Department of Land and Natural Resources on September 1, 1964.

On June 24, 1997, under agenda item D-12, the Board amended the rent for the subject permit to be calculated based on a minimum payment of \$30,000.00 per month or \$1.50 per paying customer, which ever is greater. This was in response to the agreement between Hilton and Atlantis Submarines to use the pier for their loading and unloading of passengers.

CURRENT REQUEST:

At the time that the amendment was being made to the Revocable Permit, staff understood that the Hilton utilized the pier for its own fleet of ships and based on the separate agreement, Atlantis was allowed to operate from the pier. Recently, Hilton has informed us that they do not have their own fleet of ships to service their guests and as a result, the Hilton has requested that they be allowed to contract with outside catamaran and/or charter vessels to provide services to their guests.

ITEM D-20

EXHIBIT E

AGENCY COMMENTS:

DOBOR--The pier and the navigation channel leading to the pier are located within the Waikiki Ocean Water Restricted Zone B, which is under the jurisdiction of DOBOR. Existing DOBOR rules prohibit vessels from operating within this area except for outrigger canoes, sailing catamarans registered with the Department to conduct operations within Waikiki Ocean Waters, and vessels operating from the Hilton Hawaiian Village pier. From time to time DOBOR receives requests from vessel operators to load or discharge passengers from the beach adjacent to the pier. Such requests have been consistently denied to avoid possible injury to swimmers and bathers in the area, and the fact that the pier and navigation channel were constructed for the express purpose of providing a safe, convenient facility for this purpose. DOBOR rules contain no provision limiting the use of the pier, on the presumption that the Hilton Hawaiian Village, as owner of the pier, had the liability for any injury arising from such use.

ANALYSIS:

The initial requests by Hilton to allow outside operators to use the pier were approved, rightly or wrongly, administratively by the Division; however, we have seen an increase in these requests in recent months. While staff understands the need for Hilton to provide services to their guests, staff was concerned that the aspect of allowing Hilton to choose any outside operator to use the pier was not formally discussed or disclosed at the prior Land Board meetings.

At this time, staff is seeking clarification from the Board that will allow Hilton to use the pier at its discretion in providing services to its guests. Staff does not object to this as long as the state is compensated at the \$1.50 per paying customer rate stated in the permit. Hilton would then include these passengers in their monthly reporting record to the Department.

RECOMMENDATION:

That the Board clarify the uses allowed under Revocable Permit No. S-3528 for the pier fronting the Hilton Hawaiian Village at Waikiki, Oahu, Hawaii, TMK: 2-6-8:29 to include any operator that the Hilton Hawaiian Village chooses to provide services to its guest and that the guest who use the pier be included in the monthly rental calculations for this permit.

Respectfully submitted,


Dean Uchida

APPROVED FOR SUBMITTAL:


TIMOTHY E. JOHNS, Chairperson